

CHAPTER 19

DOMESTIC OPERATIONS

REFERENCES

1. 18 U.S.C. § 1385, Posse Comitatus Act.
2. 10 U.S.C. §§ 371-382, Chapter 18, Military Support For Civilian Law Enforcement Agencies.
3. 10 U.S.C. §§ 331-335, Chapter 15, Insurrections.
4. 32 U.S.C. § 112, Drug Interdiction and Counter-Drug Activities.
5. 42 U.S.C. § 5121, et seq., as amended (Stafford Act).
6. 50 U.S.C. § 2301-2317, Chapter 40, Defense Against Weapons of Mass Destruction.
7. National Defense Authorization Act for Fiscal Year 1991, P.L. 101-510, Section 1004, as amended, Additional Support for Counter-Drug Activities.
8. 44 CFR Part 206, Federal Emergency Management Agency.
9. DoDD 3025.15, *Military Assistance to Civil Authorities*, 18 February 1997.
10. DoDD. 3025.1, *Military Support to Civil Authorities*, 15 January 1993.
11. DoD 3025.1-M, *Manual for Civil Emergencies*, June 1994.
12. DoDD. 3025.12, *Military Assistance for Civil Disturbances*, 4 February 1994.
13. DoDD. 5525.5, *DoD Cooperation With Civilian Law Enforcement Officials*, 15 January 1986, through Change 1, 20 December 1989.
14. DoDI 5525.10, *Using Military Working Dog Teams to Support Law Enforcement Agencies in Counterdrug Missions*, 17 September 1990.
15. DoDD 5210.56, *Use of Deadly Force and the Carrying of Firearms by DoD Personnel Engaged in Law Enforcement and Security Duties*, 1 November 2001.
16. Secretary of Defense Memorandum of 6 October 1998, Subj: Military Support to Counternarcotics Activities
17. Deputy Secretary of Defense Memorandum of 29 June 1996, Subj: DoD Training Support to U.S. Civilian Law Enforcement Agencies.
18. DoD Civil Disturbance Plan GARDEN PLOT.
19. Office of the Defense Coordinator for Drug Enforcement Policy and Support Policy of 26 Jan 95, *Priorities, Policies, and Procedures for Department of Defense Counterdrug Support to Domestic Drug Law Enforcement Agencies*.
20. NGR 500-1/ ANGI 10-8101, *Military Support to Civil Authorities*, 1 February 1996.
21. NGR 500-2/ ANGI 10-801, *National Guard Counterdrug Support*, 31 March 2000.
22. CJCS Instruction 3121.02, *Rules on the Use of Force by DoD Personnel Providing Support to Law Enforcement Agencies Conducting Counterdrug Operations in the United States*, 31 May 2000.
23. CJCS Instruction 3710.01, *Delegation of Authority for Approving Operational Support to Drug Law Enforcement Agencies and Counterdrug-Related Deployment of DoD Personnel*, 28 May 1993 (under revision).
24. AR 190-12, *Military Working Dogs*, 30 September 1993.
25. AR 190-14, *Carrying of Firearms and Use of Force for Law Enforcement and Security Duties*, 12 March 1993.
26. AR 500-51, *Support to Civilian Law Enforcement*, 1 July 1983.
27. AR 500-60, *Disaster Relief*, 1 August 1981.
28. AR 500-50, *Civil Disturbances*, 21 April 1972.
29. AR 700-131, *Loan and Lease of Army Materiel*, 1 September 1996.
30. FM 19-15, *Civil Disturbances*, 25 November 85.
31. FM 100-19, *Domestic Support Operations*, 01 July 1993.
32. SECNAVINST 5820.7B, *Cooperation With Civilian Law Enforcement Officials*, 28 March 1988.
33. OPNAVINST 3440.16C, *Navy Civil Emergency Management Program*, 10 March 1995

34. OPNAVINST 5585.2B, *Department of the Navy Military Working Dog (MWD) Program*, 25 August 1997.
35. AFI 10-801, *Assistance to Civilian Law Enforcement Agencies*, 15 April 1994.
36. AFI 10-802, *Military Support to Civil Authorities*, 25 February 1994.
37. AFI 31-202, *Military Working Dog Program*, 1 August 1999.
38. AFI 31-207, *Arming and Use of Force by Air Force Personnel*, 1 September 1999.
39. MCO 3440.7A, *Support to Civil Authorities*, 13 October 1998.

OVERVIEW.

The military's mission is to fight and win the nation's wars. In today's world, this includes the mission of Homeland Security. The current concept of Homeland Security consists of two major components: (1) homeland defense; and (2) support to civil authorities. This chapter focuses on DoD support to civil authorities. Chapter 24 provides further information on the overall Homeland Security mission. In the area of civil support, DoD cooperates with civil authorities, but the relationship is generally one of support—the civilian authorities retain primary responsibility. This chapter will explore the various authorities and restrictions in the area of domestic operations. The chapter will follow the following outline:

Starting point for all DoD support: DoDD 3025.15.

Posse Comitatus Act, 18 U.S.C. § 1385.

Who? Applies to persons on active federal military service.

What? Direct enforcement of the civil law, but not activities which are military functions.

Where? Generally, no extraterritorial effect.

Effect? Criminal penalties.

Support to Law Enforcement.

Sharing Information: 10 U.S.C. § 371, DoDD 5525.5.

Loan of Equipment: 10 U.S.C. § 372, DoDD 5525.5.

Expert Advice and Training: 10 U.S.C. § 373, DoDD 5525.5.

Maintenance and Operation of Equipment: 10 U.S.C. § 374, DoDD 5525.5.

Law Enforcement Detachments: 10 U.S.C. § 379.

Emergencies Involving Chemical or Biological Weapons: 10 U.S.C. § 382.

Miscellaneous Exceptions: DoDD 5525.5

Counterdrug Support.

Detection and Monitoring: 10 U.S.C. § 124.

National Guard: 32 U.S.C. § 112.

Training and other support: Section 1004, FY 91 NDAA; CJCSI 3710.01.

Weapons of Mass Destruction: Public Law 104-201.

Civil Disturbances: Insurrection Act (10 U.S.C. §§ 331-334); DoDD 3025.12.

Civil Disasters and Emergencies: Stafford Act, DoDD 3025.1.

GUIDE FOR PRACTICE.

- Respond to situations requiring immediate action to save lives, prevent human suffering, or mitigate great property damage under imminently serious conditions. Notify the appropriate approval authority as soon as possible.
- Consult DoDD 3025.15.
- Review the 6 criteria from DoDD 3025.15 for support: legality, lethality, risk, cost, appropriateness, and readiness.
- Note that SECDEF has, in certain circumstances, changed the approval authority (i.e., he has reserved the authority to himself) previously set out in other DoD Directives.
- Consult the appropriate DoD/Service regulation.
- Find and forward the requests to the appropriate approval authority.
- Remember the fiscal implications: most support is reimbursable, so ensure costs are captured.

DODD 3025.15

A. This directive governs all DoD military assistance provided to civil authorities within the 50 States, District of Columbia, Puerto Rico, U.S. possessions, and territories. It provides criteria against which all requests for support shall be evaluated. The directive addresses them to approval authorities, but commanders at all levels should use them in providing a recommendation up the chain of command.

1. Legality - compliance with the law.
2. Lethality - potential use of lethal force by or against DoD forces.
3. Risk - safety of DoD forces.
4. Cost - who pays, impact on DoD budget.
5. Appropriateness - whether the requested mission is in the interest of DoD to conduct.
6. Readiness - impact on DoD's ability to perform its primary mission.

B. Approval Authority. The directive changes the approval authority, in certain cases, from that set forth in older directives, but the older directives have not been changed and are otherwise applicable. For this reason, this directive should always be the first directive consulted.

1. The Secretary of Defense has reserved to himself the authority to approve DoD support for:
 - a. Civil Disturbances.
 - b. Responses to acts of terrorism.

c. Support that will result in a planned event with the potential for confrontation with specifically identified individuals or groups, or which will result in the use of lethal force.

2. When CINC-assigned forces are to be used, there must be coordination with the Chairman of the Joint Chiefs of Staff. After coordination with the affected CINC, CJCS will determine whether there is a significant issue requiring SECDEF approval.

3. Immediate response authority in the local commander is not affected.

POSSE COMITATUS ACT

A. The **Posse Comitatus Act** (18 U.S.C. § 1385) (PCA) prohibits use of Army and Air Force personnel to execute the civil laws of the U.S., “except in cases and under circumstances expressly authorized by the Constitution or Act of Congress.” Violation of the Act carries with it criminal liability (felony) and the possibility of a fine and imprisonment. This prohibition is applicable to Navy and Marine Corps personnel as a matter of DoD policy [see DoD Directive 5525.5]. The primary prohibition of the PCA is against direct military involvement in law enforcement activities. Generally, court interpretations have held that military support short of actual search, seizure, arrest, or similar confrontation with civilians, (i.e., traditional law enforcement functions) is not a violation of the Act. Examples of permitted support include the provision of information, equipment, and facilities.

1. To Whom the PCA Applies.

a. Active duty personnel in the Army and Air Force.

(1) Most courts interpreting the Posse Comitatus Act have refused to extend its terms to the Navy and Marine Corps. (*United States v. Yunis*, 924 F.2d 1086 (D.C. Cir. 1991); *United States v. Roberts*, 779 F.2d 565 (9th Cir. 1986), *cert. denied*, 479 U.S. 839 (1986); *United States v. Mendoza-Cecelia*, 736 F.2d 1467 (11th Cir. 1992)).

(2) 10 U.S.C. § 375 directed SECDEF to promulgate regulations forbidding direct participation “by a member of the Army, Navy, Air Force, or Marine Corps in a search, seizure, arrest, or other similar activity.” SECDEF has done so in DoDD 5525.5. Therefore, the proscription has been extended by regulation to the Navy and Marine Corps. (See DoDD 5525.5, para. B(1), and enclosure 4, para C.). SECDEF and SECNAV may grant exceptions on a case by case basis. DoDD 5525.5, Encl. 4, para. C., SECNAVINST 5820.7b, para. 9c.

b. Reservists on active duty, active duty for training, or inactive duty for training.

c. National Guard personnel in Federal service (Title 10 status).

d. Civilian employees of DoD when under the direct command and control of a military officer. (DoDD 5525.5, encl. 4; AR 500-51, para. 3-2; SECNAVINST 5820.7B, para. 9b(3)).

e. The PCA does NOT cover:

(1) A member of a military service when off duty and acting in a private capacity. [A member is not acting in a private capacity when assistance to law enforcement officials is rendered under the direction or control of DoD authorities]. (DoDD 5525.5, Encl. 4; AR 500-51 para. 3.2; SECNAVINST 5820.7B, para. 9b(4)); AFI 10-801.

(2) A member of the National Guard when not in Federal Service.

(3) A member of a Reserve Component when not on active duty, active duty for training, or inactive duty for training.

(4) Members of the Coast Guard (14 U.S.C. § 2). *Jackson v. Alaska*, 572 P.2d 87 (Alaska 1977).

(5) Members of the military who are “detailed” out to another federal agency. A 1971 DoJ Office of Legal Counsel memo by then-Assistant Attorney General William Rehnquist opined that if a member of the Army, pursuant to a specific authorizing statute, is detailed out to another federal agency to provide support, while performing those duties the member is not “any part” of the Army for purposes of the PCA. The memo further relied on the fact that the military members in the situation addressed were not charged against statutory end-strength limits.

2. To What the PCA Applies.

a. Prohibits direct assistance, including:

- (1) Interdiction of a vehicle, vessel, aircraft, or other similar activity;
- (2) A search or seizure;
- (3) An arrest, apprehension, stop and frisk, or similar activity; and
- (4) Use of military personnel for surveillance or pursuit of individuals, or as undercover agents, informants, investigators, or interrogators. DoDD 5525.5, Encl. 4, para. A.3.

b. Analytical framework. There are three separate tests courts apply to determine whether the use of military personnel has violated the PCA.

(1) FIRST TEST: whether the action of the military personnel was “active” or “passive.” United States v. Red Feather, 392 F. Supp. 916, at 921 (W.D.S.D 1975); United States v. Yunis, 681 F. Supp. 891, at 892 (D.D.C. 1988); United States v. Rasheed, 802 F.Supp. 312 (D. Hawaii 1992).

(2) SECOND TEST: whether use of the armed forces pervaded the activities of civilian law enforcement officials. United States v. Hartley, 678 F.2d 961, 978 (11th Cir. 1982) *cert. den.* 459 U.S. 1170 (1983); United States v. Hartley, 796 F.2d 112 (5th Cir. 1986); United States v. Bacon, 851 F.2d 1312 (11th Cir. 1988); Hayes v. Hawes, 921 F.2d 100 (7th Cir. 1990);.

(3) THIRD TEST: whether the military personnel subjected citizens to the exercise of military power which was:

- (a) Regulatory (a power regulatory in nature is one which controls or directs);
- (b) Proscriptive (a power proscriptive in nature is one that prohibits or condemns); or
- (c) Compulsory (a power compulsory in nature is one that exerts some coercive force). United States v. McArthur, 419 F. Supp. 186 (D.N.D. 1975); United States v. Casper, 541 F.2d 1274 (8th Cir. 1976), *cert. denied*, 30 U.S. 970 (1977). United States v. Yunis, 681 F. Supp. 891, at 895-6 (D.D.C. 1988); United States v. Kahn, 35 F.3d 426 (9th Cir. 1994).

c. The PCA does NOT apply to actions furthering a military or foreign affairs function of the United States. This is sometimes known as the “Military Purpose Doctrine.” The primary purpose of the action must be to further a military interest. Civilians may receive an incidental benefit. DoDD 5525.5, Encl. 4, para. A.2.a. Such military purposes include:

(1) Investigations and other actions related to enforcement of the UCMJ. United States v. Thompson, 33 M.J. 218 (CMA 1991), *cert. denied*. 502 U.S. 1074 (1992).

(2) Investigations and other actions that are likely to result in administrative proceedings by DoD, regardless of whether there is a related civil or criminal proceeding.

(3) Investigations and other actions related to the commander's inherent authority to maintain law and order on a military installation or facility. Harker v. State, 663 P.2d 932 (Alaska 1983); Anchorage v. King, 754 P.2d 283 (Alaska Ct. App. 1988); Eggleston v. Department of Revenue, 895 P.2d 1169 (Colo. App 1995). Civilians may be detained for an on-base violation long enough to determine whether the civilian authorities are interested in assuming the prosecution. Applewhite v. United States, 995 F.2d 997 (10th Cir. 1993), *cert. denied*, 510 U.S. 1190 (1994).

(4) Protection of classified military information or equipment.

(5) Protection of DoD personnel, DoD equipment, and official guests of the DoD.

(6) Such other actions that are undertaken primarily for a military or foreign affairs purpose.

3. Where the PCA Applies. Extraterritorial Effect of the PCA

a. A 1989 DoJ Office of Legal Counsel opinion concluded that the Posse Comitatus Act does not have extraterritorial application. Memorandum, Off. Legal Counsel for General Brent Scowcroft, 3 Nov. 1989. This opinion also states the restrictions of 10 U.S.C. §§ 371 - 381, specifically 10 U.S.C. § 375, also were not intended to have extraterritorial effect

b. Some courts have also adopted the view that the Posse Comitatus Act imposes no restriction on use of U.S. armed forces abroad, noting that Congress intended to preclude military intervention in domestic affairs. United States v. Cotton, 471 F.2d 744 (9th Cir. 1973); Chandler v. United States, 171 F.2d 921 (1st Cir. 1948), *cert. denied*, 336 U.S. 918 (1949); D'Aquino v. United States, 192 F.2d 338 (9th Cir. 1951), *cert. denied*, 343 U.S. 935 (1952). (Note: both *Chandler* and *D'Aquino* involved law enforcement in an area of US military occupation.) But see, United States v. Kahn, 35 F.3d 426, 431 n. 6 (9th Cir. 1994) (In a case involving the applicability of the PCA to Navy activities in support of maritime interdiction of a drug-smuggling ship, the government maintained the PCA had no extraterritorial effect. While the court stated that issue had not been definitively resolved, it did state that 10 U.S.C. §§ 371-381 did "impose limits on the use of American armed forces abroad.")

c. Note, however, that DoD policy, as contained in DoDD 5525.5, which incorporates the restrictions of 10 U.S.C. § 375, applies to all U.S. forces wherever they may be. Two weeks after the promulgation of the DoJ memo, Secretary Cheney amended the Directive to read that, in the case of compelling and extraordinary circumstances, SECDEF may consider exceptions to the prohibition against direct military assistance with regard to military actions outside the territorial jurisdiction of the United States.

4. What is the effect of violating the PCA? Criminal Sanctions. 2 years imprisonment, fine, or both.

SUPPORT TO LAW ENFORCEMENT

A. Although the PCA prohibits the type of direct law enforcement action discussed above, it does not prohibit all military support to civilian law enforcement. For such support to be authorized, it must either: (1) fall outside the strictures of the PCA; or (2) be specifically authorized by the Constitution or statute. Some support, such as that authorized in 10 U.S.C. §§ 371-382, arguably falls outside the strictures of the PCA. In case there was any doubt, however, Congress specifically stated in passing this legislation that it intended DoD to provide the authorized support.

1. **Sharing Information (§ 371).** DoD may provide information to LEAs gained during normal military training or operations, and shall "to the maximum extent practicable" consider the information needs of LEAs when planning normal training or military operations; and shall, "to the extent consistent with national security," share intelligence with LEAs (10 U.S.C. §371, DoDD 5525.5). [NOTE: During an otherwise valid training mission or exercise, information gathered may be passed to other agencies. Moreover, 10 U.S.C. § 371 requires DoD to take LEA needs into account when planning/executing operations. Examples cited in legislative history include "scheduling training exercises using night vision devices in border areas, conducting photo-reconnaissance training missions in a manner that serves the need of a LEA for aerial surveillance of potential marijuana fields, and similar activities." House Conference Report No. 100-989, Nat'l Def. Auth. Act FY 89, p. 2529, U.S. Cong. and Admin. News.]

a. Care must be taken to ensure that information/intelligence shared with LEAs about U.S. persons complies with intelligence law restrictions. See Chapter 15, Intelligence Law, of this handbook for further information on this subject.

b. Approval Authority. DoDD 5525.5 does not specifically mention the approval authority for sharing information. Although 10 U.S.C. § 374 says “The Secretary of Defense may,” and there has been no delegation in DoDD 5525.5, it is reasonable to conclude that any commander may share information on his own authority, given the highly perishable nature of much of the information and that such sharing does not, independent of § 374 authority, violate the PCA.

2. Loan of Equipment and Facilities (§ 372).

a. With proper approval, DoD activities may make equipment (including associated supplies and spare parts), base facilities, or research facilities available to Federal, State, or local law enforcement officials for law enforcement purposes. (10 U.S.C. § 372, DoDD 5525.5) There must be no adverse impact on national security or military preparedness. **Loans** (which may be made only to Federal agencies) and **leases** (which may be made to State and local agencies) must comply with relevant statutes, e.g., the Economy Act (31 U.S.C. § 1535) and the Leasing Statute (10 U.S.C. § 2667), and service regulations, e.g., AR 500-51, AR 700-131, and AFI 10-801, Attachment 1, Section C.

b. Approval authority.

(1) SECDEF. Any requests for potentially lethal support, including loans of arms, combat and tactical vehicles, vessels, or aircraft, and ammunition. DoDD 3025.15, DoDD 5525.5.

(2) Army:

(a) HQDA (DALO-SMS). Non-lethal equipment in excess of 60 days. Installation Commander can approve all other equipment requests if loan/lease is for 60 days or less.

(b) HQDA (DAMO-ODS). Requests for use of installation or research facilities. AR 500-51, para. 2-5.

(3) Navy & Marines: Assistant SECNAV (Manpower and Reserve Affairs) for non-lethal equipment for more than 60 days. All other requests may be approved as specified in SECNAVINST 5820.7B, para. 9e(3).

(4) Air Force: Ass’t SECAF for Manpower, Reserve Affairs, Installations, and Environment for all non-drug related requests. AFI 10-801, Attachment 4.

(5) National Guard: Loan of weapons, combat/tactical vehicles, vessels and aircraft require approval of the service secretary or their designee. Requests for loan/lease of NG equipment which require HQDA or HQAF approval will be reviewed by NGB. NGB 500-1/ANGI 10-8101, para. 3-1.

c. In addition to loan/lease authority, 10 U.S.C. § 2576a, “Excess Personal Property; Sale or Donation for Law Enforcement Activities,” permits DoD to provide excess personal property suitable for use in counter-drug and counter-terrorism activities to federal and state agencies. This includes authority to furnish small arms and ammunition. The Defense Logistic Agency manages this program. Memorandum of the Secretary of Defense for the Under Secretary of Defense for Acquisition and Technology, 26 June 1995. The four Regional Logistics Support Offices (Buffalo, Miami, El Paso, Los Angeles) actually provide this excess property.

3. Expert Advice and Training (§ 373).

a. Military personnel may be used to train civilian law enforcement personnel in the use of equipment, including equipment loaned or leased as described above (10 U.S.C. § 373, DoDD 5525.5). Large scale or elaborate training programs are prohibited, as is regular or direct involvement of military personnel in activities that are fundamentally civilian law enforcement operations. Training should be limited to situations when the use of non-DoD

personnel would be unfeasible or impractical from a cost or time perspective and would not otherwise compromise national security or military preparedness concerns. Such assistance may not involve DoD personnel in a direct role in a law enforcement operation, except as otherwise authorized by law. Except as otherwise authorized by law, the performance of such assistance by DoD personnel shall be at a location where there is not a reasonable likelihood of a law enforcement confrontation.

(1) Note that the Deputy Secretary of Defense has provided policy guidance in this area, which limits the types of training U.S. forces may provide. (Deputy Secretary of Defense Memorandum of 29 June 1996, Subj: DoD Training Support to U.S. Civilian Law Enforcement Agencies, reproduced as an appendix to this Chapter.) The policy is based on prudential concerns that advanced training could be misapplied or misused by CLEAs, resulting in death or injury to non-hostile persons. The memo permits basic military training such as basic marksmanship, patrolling, medical/combat lifesaver, mission planning, and survival skills. It prohibits what it terms “advance military training,” which is defined as “high intensity training which focuses on the tactics, techniques, and procedures (TTPs) required to apprehend, arrest, detain, search for, or seize a criminal suspect when the potential for a violent confrontation exists.” Examples of such training are sniper training, Military Operations in Urban Terrain (MOUT), Advanced MOUT, and Close Quarter Battle/Close Quarter Combat (CQB/CQC) training.

(2) A single general exception exists to provide this advanced training at the U.S. Army Military Police School. In addition, USCINCSOC may approve this training, on an exceptional basis, by special operations forces personnel.

b. Military personnel may also be called upon to provide expert advice to civilian law enforcement personnel. However, regular or direct involvement in activities that are fundamentally civilian law enforcement operations is prohibited.

(1) MWDT. A specific example of this type of support is military working dog team support to civilian law enforcement. The dogs have been analogized to equipment and its handler provides expert advice. See DoDD 5525.10, Using Military Working Dog Teams to Support Law Enforcement Agencies in Counterdrug Missions, 17 Sept. 1990; Military Working Dog Program, AFI 31-202.

(2) Weapons of Mass Destruction. Congress has directed that DoD provide certain expert advice to federal, state, and local agencies with regard to weapons of mass destruction (WMD). This training is non-reimbursable because Congress has appropriated specific funds for these purposes.

(a) 50 U.S.C. § 2312: Training in emergency response to the use or threat of use of WMD.

(b) 50 U.S.C. § 2315: Program of testing and improving the response of civil agencies to biological and chemical emergencies. (Department of Energy runs the program for responses to nuclear emergencies.)

c. Approval Authority.

(1) SECDEF.

(a) Training or expert advice to law enforcement in which there is a potential for confrontation between the trained law enforcement and specifically identified civilian individuals or groups.

(b) Assignments of 50 or more DoD personnel or a period of assignment of more than 30 days. The Assistance Secretary of Defense (Manpower, Reserve Affairs, and Logistics) is the approval authority for any other assignment.

(2) Army. DOMS is the approval authority. AR 500-51, para. 3-1d.

(3) Navy & Marines. The Secretary of the Navy is the approval authority. SECNAVINST 5820.7B, para. 9.e.

d. Funding. Support provided under these authorities is reimbursable (10 U.S.C. § 377), unless:

- (1) The support is provided in the normal course of training or operations; or
- (2) The support results in a substantially equivalent training value.

4. **Maintenance and Operation of Equipment (§ 374)**. DoD may make personnel available to maintain and operate equipment for LEAs (10 U.S.C. § 374, DoDD 5525.5). The statute sets out a non-exclusive list of purposes for which DoD personnel may operate equipment, to include:

a. DoD may make personnel available to operate equipment for a federal LEA with responsibility for controlled substances laws, including the Maritime Drug Law Enforcement Act (e.g., DEA and Coast Guard); Immigration and Nationality Act enforcement (e.g., INS); and customs law enforcement (e.g., U.S. Customs Service). The request for this support must come from the head of the federal agency.

b. DoD may make personnel available to operate equipment for a federal LEA with respect to “assistance that such agency is authorized to furnish to a state, local, or foreign government which is involved in the enforcement of . . .” laws similar to federal controlled substances laws (including the Maritime Drug Law Enforcement Act), immigration and customs law enforcement. The request for this support must come from the head of the federal agency.

c. Detection, monitoring, and communication of the movement of air and sea traffic. [Note that for this and subsequent items, the support applies to any civilian law enforcement agency, with no requirement that the request for support come from the head of the agency.]

d. Detection, monitoring, and communication of the movement of surface traffic outside the geographic boundary of the U.S. and within the U.S. not to exceed 25 miles if the initial detection occurred outside of the boundary.

e. Aerial reconnaissance.

f. Interception of vessels or aircraft detected outside the land area of the U.S. for purposes of communicating with them and directing them to go to a location designated by appropriate civilian officials. DoD personnel may continue to operate this equipment to pursue these vessels or aircraft into the land area of the U.S. in cases where the detection began outside such land area. [Note: this “hot pursuit” provision is exceptional authority for DoD to conduct operations within CONUS that would normally fall within the purview of LEAs]. This authority does not permit physical force downs of aircraft.

g. Operation of equipment to facilitate communications for LEAs.

h. Subject to the joint approval of SECDEF and the Attorney General, transport federal LEA personnel and operate a base of operations for them. In the case of law enforcement operations OCONUS, the conduct of these operations also requires the approval of the Secretary of State.

i. Finally, the statute permits any other operation of equipment for civilian law enforcement agencies so long as such support does not involve direct participation by DoD personnel in a civilian law enforcement operation unless such direct participation is otherwise authorized by law.

5. **Law Enforcement Detachments (§ 379)**. U.S. Coast Guard personnel shall be assigned to naval vessels operating in drug interdiction areas (10 U.S.C. § 379). Such personnel have law enforcement powers, and are known as Law Enforcement Detachments (LEDETs). When approaching a contact of interest, tactical control (TACON) of the vessel shifts to the Coast Guard. As a “constructive” Coast Guard vessel, the ship and its crew are permitted to participate in direct law enforcement. However, to the maximum extent possible, the law enforcement duties should be left to the Coast Guard personnel. Military members should offer necessary support.

6. **Emergencies Involving Chemical or Biological Weapons (§ 382)**. In response to an emergency involving biological or chemical weapons of mass destruction which is beyond the capabilities of the civil authorities to handle, the

Attorney General may request DoD assistance directly (10 U.S.C. § 382). The assistance provided includes monitoring, containing, disabling, and disposing of the weapon. Regulations, required by the statute, implementing the authority, have not yet been promulgated.

7. **Miscellaneous Exceptions.** DoDD 5525.5, Encl. 4, para. A.2.e., contains a list of federal statutes which contain express authorization for the use of military forces to enforce the civil law. Among them are protection of the President, Vice President, and other dignitaries, and assistance in the case of crimes against members of Congress, foreign officials, or involving nuclear materials

B. Counterdrug Support.

1. General.

a. Counterdrug support operations have become an important activity within DoD. All DoD support is coordinated through the Office of the Defense Coordinator for Drug Enforcement Policy and Support (DEP&S), which is located within the Office of the Assistant Secretary of Defense for Special Operations and Low Intensity Conflict (ASD (SO/LIC)).

b. What separates counterdrug support from most other areas of support is that it is non-reimbursable. For FY00, Congress appropriated nearly \$1 billion for DoD counterdrug support. DEP&S channels that money to the providers of counterdrug support.

2. **Use of Force:** The use of force in counterdrug missions will be governed by the Standing Rules of Engagement (CJCSI 3121.01A), Rules on the Use of Force by DoD Personnel during Military Operations Providing Support to Law Enforcement Agencies Conducting Counterdrug Operations in the United States (CJCSI 3121.02), and any mission specific limitations imposed by the commander. Much of the format and text of CJCSI 3121.02 is similar to that of the SROE. The rules concerning self-defense and a commander's obligations to protect his unit from a hostile threat are identical. Perhaps the key aspects of CJCSI 3121.02 concern the requirement to use non-deadly force if it can be used without increasing the danger or threat of death or serious physical injury to DOD personnel.

3. Detection and Monitoring.

a. 10 U.S.C. § 124 made DoD the lead federal agency for detection and monitoring (D&M) of aerial and maritime transit of illegal drugs into the United States. D&M is therefore a DoD mission.

(1) Although a mission, D&M is to be carried out in support of federal, state, and local law enforcement authorities. Note that the statute does not extend to D&M missions covering land transit (i.e., the Mexican border). Interception of vessels or aircraft is permissible outside the land area of the United States to identify and direct the vessel or aircraft to a location designated by the supported civilian authorities. Vessels or aircraft detected outside of the United States may be pursued over the United States.

b. D&M missions involve airborne (AWACs, aerostats), seaborne (primarily USN vessels), and land-based radar (to include Remote Other The Horizon Radar (ROTHR)) sites.

4. National Guard.

a. National Guard forces are a critical source of military support to CLEAs. Operating under state law and National Guard regulations, these units conduct counterdrug operations in all 54 states and territories. National Guard units provide 16 types of support, which are listed in NGR 500-2.

b. 32 U.S.C. § 112 provides federal funding for National Guard counterdrug activities. The statute provides that SECDEF may provide funds for: (1) pay, allowances, clothing, subsistence, gratuities, travel, and related expenses, as authorized by State law, of personnel of the National Guard of that State used, while not in Federal Service, for the purpose of drug interdiction and counter-drug activities; (2) the operation and maintenance of the equipment and facilities of the National Guard of that State used for the purpose of drug interdiction and counter-drug activities; and (3)

the procurement of services and leasing of equipment for the National Guard of that State used for the purpose of drug interdiction and counter-drug activities.

c. The State must prepare a drug interdiction and counter-drug activities plan. DEP&S reviews each State's implementation plan and disburses funds.

d. An important aspect of 32 U.S.C. § 112 is that, although the National Guard is performing counterdrug support operations using federal funds and under federal guidance, it remains a state militia force and is **not** to be considered a federal force "for purposes of the Posse Comitatus Act or for any other purpose." (Legis. Hist., House Conf. Report 100-989, Pub. L. 100-456, p. 2583, U.S. Cong. and Admin. News.). Also note that National Guard members are covered by the Federal Tort Claims Act while engaged in counterdrug operations, although they remain in a non-federal status. (see commentary, *The Use of National Guard Personnel for Counterdrug Operations: Implications Under the Federal Tort Claims Act*, ARMY LAW., June 1991).

e. The National Guard, as a state militia, is not subject to the restrictions of the Posse Comitatus Act while not in federal service. Thus, the Guard has more flexibility than federal forces in conducting counterdrug support operations. However, the National Guard Bureau (NGB) has imposed a number of policy restrictions on counterdrug operations (see NGR 500-2, National Guard Counterdrug Support to LEAs). **State law** will determine whether a particular operation may be legally supported by the Guard. NGR 500-2 contains excellent operational guidance to National Guard units engaged in counterdrug operations.

5. Additional Support to Counterdrug Agencies.

a. General. Congress has given DoD additional authorities to support Federal, State, local, and foreign agencies which have counterdrug responsibilities. These are in addition to the authorities contained in 10 U.S.C. §§ 371-377 (discussed above). Congress has not chosen to codify these authorities, however, so it is necessary to refer to the public laws instead. Many of these are reproduced in the notes following 10 U.S.C. § 374 in the annotated codes.

b. Section 1004. (Reproduced in an appendix to this Chapter)

(1) Section 1004 is the primary authority used for counterdrug operations. The statute permits broad support to the following law enforcement agencies which have counterdrug responsibilities:

(a) Federal, State, and Local.

(b) Foreign, when requested by a U.S. Federal counterdrug agency. (Typically the DEA or member of the State Department Country Team that has counterdrug responsibilities within the country.)

(2) Types of support:

(a) Maintenance and repair of equipment.

(b) Transportation of personnel (U.S. & foreign), equipment, and supplies CONUS/OCONUS.

(c) Establishment of bases of operations CONUS/OCONUS.

(d) Training of law enforcement personnel, to include associated support and training expenses.

(e) Detection and monitoring of air, sea, surface traffic outside the United States, and within 25 miles of the border if the detection occurred outside the United States.

(f) Construction of roads, fences, and lighting along U.S. border.

(g) Linguist and intelligence analyst services.

(h) Aerial and ground reconnaissance.

(i) Establishment of command, control, communication, and computer networks for improved integration of law enforcement, active military, and National Guard activities.

(3) These authorities are not exceptions to the Posse Comitatus Act. Any support provided must comply with the restrictions of the PCA. Additional, any domestic training provided must comply with the Deputy Secretary of Defense policy on advanced training.

(4) Approval Authorities: CJCSI 3710.01.

(a) Non-Operational Support. That which does not involve the active participation of DoD personnel, to include the provision of equipment only, use of facilities, and formal schoolhouse training, is requested and approved in accordance with DoDD 5525.5 and implementing Service regulations, discussed above.

(b) Operational Support.

1. The Secretary of Defense is the approval authority. The approval will typically be reflected in a CJCS-issued deployment order.

2. SECDEF has delegated approval authority for certain missions to Combatant Commanders, with the ability for further delegation, but no lower than a flag officer. The delegation from SECDEF depends on the type of support provided, the number of personnel provided, and the length of the mission. See CJCSI 3710.01. Example: For certain missions along the southwest border, the delegations runs from SECDEF to JFCOM to FORSCOM to Joint Task Force SIX (JTF-6). However, SECDEF has continued to withhold the delegation for approval of counterdrug ground reconnaissance training missions within the United States. (Secretary of Defense Memorandum of 6 October 1998, Subj: Military Support to Counternarcotics Activities, reproduced as an appendix to this Chapter.)

(5) Requests for DoD support must meet the following criteria:

(a) Support requested has a clear counterdrug connection,

(b) Support request must originate with a federal, state or local agency having counterdrug responsibilities,

(c) Request must be for support that DoD is authorized to provide,

(d) Support must clearly assist with the counterdrug activities of the agency,

(e) Support is consistent with DoD support of the National Drug Control Strategy. DEP&S has promulgated the following priorities for the provision of support:

1. Multi-jurisdictional, multi-agency task forces that are in a high intensity drug trafficking area (HIDTA)

2. Individual agencies in a HIDTA

3. Multi-jurisdictional, multi-agency task forces not in a HIDTA.

4. Individual agencies not in a HIDTA

(f) All approved counterdrug operational support must have military training value.

c. Other Statutes.

(1) Section 1206, FY 90 NDAA. Congress directed the armed forces, to the maximum extent practicable, to conduct training exercises in declared drug interdiction areas.

(2) Section 1031, FY 97 NDAA. Congress authorized, and provided additional funding specifically for, enhanced support to Mexico. The support involves the transfer of certain non-lethal specialized equipment such as communication, radar, navigation, and photo equipment.

(3) Section 1033, FY 97 NDAA. Congress authorized, and provided additional funding specifically for, enhanced support to Colombia and Peru. The additional support is similar that provided to Mexico under Section 1031, but also includes boats suitable for riverine operations.

C. **Weapons of Mass Destruction** In 1996, Congress passed the Defense Against Weapons of Mass Destruction Act, commonly known as the Nunn-Lugar-Domenici Act. Public Law 104-201. The intent of the Act was to enhance the capability of the Federal Government to prevent and respond to terrorist incidents involving weapons of mass destruction. Funding is provided to DoD to develop and maintain domestic terrorism rapid response teams to aid federal, state, and local officials and responders. There are currently 35 response teams, composed of full time Army and Air National Guard members. These teams are federally resourced, trained, evaluated, and operating under federal doctrine. They perform their mission, however, primarily under command and control of state governors. If the teams are federalized, they fall under the command and control of Joint Task Force, Civil Support (JTF-CS).

CIVIL DISTURBANCES

A. **Policy.** Although the President has Constitutional (Art. IV, § 4) and statutory authority (10 U.S.C. §§ 331-334) to use the armed forces to suppress insurrections and domestic violence, the primary responsibility for protecting life and property and maintaining law and order in the civilian community is vested in the State and local governments. Military resources may be employed **in support of** civilian law enforcement operations in the 50 States, the District of Columbia, the Commonwealth of Puerto Rico, and the U.S. territories and possessions. Any employment of military forces in support of law enforcement operations shall maintain the primacy of civilian authority (DoD Directive 3025.12). Note that there is specific Constitutional and statutory authority for the military to conduct this mission. Therefore the PCA does not apply to civil disturbance missions.

B. The insurrection statutes permit the President to use the armed forces to enforce the law in the following circumstances:

1. An insurrection within a State. The legislature or governor must request assistance from the President. § 331.

2. A rebellion making it impracticable to enforce the laws of the United States (i.e., federal law) by the ordinary course of judicial proceedings. § 332.

3. Any insurrection or domestic violence which:

- a. opposes or obstructs federal law; or
- b. hinders the execution of State law so that the people are deprived of their Constitutional rights, and the State is unable or unwilling to protect those rights. § 333.

C. The Federal response.

1. The Attorney General coordinates all federal government activities relating to civil disturbances.

2. If the President decides to respond to the situation, he must first issue a proclamation, prepared by the Attorney General, to the insurgents directing them to disperse within a limited time. See Proclamation 6427 (1 May 1992) for the proclamation issued in connection with the Los Angeles riots. At the end of that time period, the President

may issue an execute order directing the use of armed forces. See Executive Order 12804 (1 May 1992) for the execute order issued in connection with the Los Angeles riots.

3. The Attorney General appoints a Senior Civilian Representative of the Attorney General (SCRAG) as his on-scene action agent.

D. The DoD Response.

1. SECDEF has reserved to himself the authority to approve support in response to civil disturbances (DoDD 3025.15). The Secretary of the Army is still listed as the approval authority in DoDD 3025.12.

2. Although the civilian authorities have the primary responsibility for response to civil disturbances, military forces shall remain under military command and control at all times.

3. The Secretary of the Army, along with DOMS, in coordination with CJCS, direct the required DoD assistance, normally by designating supported and supporting CINCs. The DoD Civil Disturbance Plan GARDEN PLOT will be implemented, with modifications as necessary.

E. Emergency Employment of Military Forces.

1. Military forces shall not be used for civil disturbances unless specifically directed by the President (pursuant to 10 U.S.C. §§ 331-334), except in the following circumstances:

a. To prevent the loss of life or wanton destruction of property or to restore governmental functioning, in cases of civil disturbances, if the duly constituted authority local authorities are unable to control the situation and circumstances preclude obtaining prior Presidential authorization.

b. When duly constituted state or local authorities are unable or decline to provide adequate protection for Federal property or functions.

2. Note that this is limited authority. Commanders should use all available means to seek Presidential authorizations through the chain of command while applying their emergency authority under the directive (DoD Directive 3025.12). See also AR 500-50, par. 2-4, which highlights the fact that, given ready access to rapid communications, it is unlikely that such action would be justified without prior approval.

F. Operational Issues.

1. Use of Force. JTF Los Angeles highlighted the need to have military forces employ a unified and consistent set of ROE. GARDEN PLOT ROE, subject to CJCS/CINC modification, provide such consistency. Some of the fundamental concepts in those ROE follow:

a. Minimum force must be used at all times when responding to civil disturbances.

b. Warning shots are not permitted because of the danger to innocent persons and the potential to create the impression on the part of citizens or fellow law enforcement personnel that sniping is widespread.

c. Deadly force may be used only if:

(1) Lesser means have been exhausted or are unavailable; and

(2) Risk of harm to innocent persons is not significantly increased; and

(3) Purpose of use is one of the following:

(a) In self-defense to avoid death or serious bodily harm.

- (b) To prevent crime involving serious risk of death or serious bodily harm.
- (c) To prevent destruction of vital public health/safety/property.
- (d) To prevent escape of person who is serious threat to person or property.

d. ROE should also address “arming orders.” These are discussed in Annex C, appendix 8 of GARDEN PLOT. It is important to ensure the consistent application of these orders by all troops in the JTF, both National Guard and active duty forces.

e. Judge advocates deployed to JTF Los Angeles stressed the need to disseminate ROE early (although this may be difficult given the time constraints) and to provide realistic training to soldiers, e.g. using vignettes to illustrate GARDEN PLOT guidance.

2. Restrictions on Activities. Recognize that the Insurrection Act (10 U.S.C. §§ 331-334) is an exception to the normal restrictions of the Posse Comitatus Act. Consequently, during civil disturbance operations, forces may directly enforce the law. However, the overarching policy of providing **support** to civilian officials should always be kept in mind. Active duty military personnel (other than Military Police or similar personnel) are not trained in law enforcement. National Guard personnel may receive some law enforcement training. When possible, law enforcement duties should be left to State and local law enforcement authorities, and military forces reserved for tasks suitable to their training.

3. Loan/Lease of Military Equipment to Civilian Law Enforcement. Civilian law enforcement officials often request the loan of military equipment during civil disturbance operations. In light of the DoD goal to minimize the military presence in such operations, this practice is viewed as an effective means of accomplishing that goal. The details of providing this support to civilian authorities is discussed below in Loans of Equipment and Facilities.

4. Exercise of Authority over Civilians.

a. Custody and Detention: Annex C, appendices 1 and 8 of GARDEN PLOT, state the general policy that civilian authorities should take civilians into custody. However, military personnel do have the authority to detain or take into custody rioters, looters, or others committing offenses, when necessary or in the absence of civilian police.

b. Searches: Annex C, appendices 1 and 8 of GARDEN PLOT, permit searches of individuals and private property, without a warrant, in limited circumstances, e.g. a reasonable belief that an individual is armed or presents an immediate risk of harm to JTF personnel or others. Generally, however, searches should be conducted by civilian law enforcement because of their greater familiarity with search and warrant procedures.

CIVIL DISASTERS AND EMERGENCIES

A. The statutory basis for providing relief is the Stafford Act. Under the U.S. constitutional system the state has primary responsibility for responding to disasters. The Stafford Act and its predecessors (which date back to 1950) provide a means by which the Federal Government can assist State governments in fulfilling those responsibilities. The Stafford Act is NOT a statutory exception to the PCA; therefore all missions done during a disaster relief response must comply with the restrictions of the PCA. DoDD 3025.1 and DoD 3025.1-M provide all the information necessary for practitioners in this area.

B. Five mechanisms which trigger involvement of Federal troops.

1. President’s **emergency 10-day authority**. 42 U.S.C. § 5170b(c). The President may use DoD to perform work “essential for the preservation of life and property.” This is done prior to any Presidential declaration of an emergency or major disaster. Emergency work includes clearing and removing debris and wreckage and the temporary restoration of essential public facilities and services.

2. Presidential declaration of a **major disaster**. 42 U.S.C. § 5170.

a. Must be at the request of the Governor, after an appropriate finding that the incident is of such severity and magnitude that it is beyond the capabilities of the State, and that Federal assistance is required.

b. As a prerequisite, the Governor must—

(1) Respond under State law (e.g., activate the State National Guard under Title 32).

(2) Execute the State's emergency plan.

(3) Provide information (to FEMA) regarding the resources that have been committed.

(4) Certify that the State will comply with cost sharing provisions under the Act.

3. Presidential declaration of an **emergency**. 42 U.S.C. § 5191(a).

a. Must be at the request of the Governor, after an appropriate finding that the incident is of such severity and magnitude that it is beyond the capabilities of the State, and that Federal assistance is required.

b. As a prerequisite, the Governor must—

(1) Respond under State law (e.g., activate the State National Guard under Title 32).

(2) Execute the State's emergency plan.

(3) Provide information (to FEMA) regarding the resources that have been committed.

(4) Define the type and amount of federal aid required. This is the primary difference between a major disaster and an emergency. Congress created the "emergency" disaster category in 1974 in recognition that there are less severe disasters that do not require the full complement of federal disaster aid (e.g., unemployment assistance, legal services, etc.). Consequently, the Disaster Relief Act of 1974 established the new category to increase the flexibility of the federal responses and to make it more practicable to provide aid to these lesser emergencies. Because these situations contemplated less comprehensive assistance, the emergency provision included the requirement for the state to specify the nature and amount of support needed.

4. Certain emergencies involving **Federal primary responsibility**. 42 U.S.C. § 5191(b).

a. President may declare an emergency (not a major disaster) regarding a situation for which the primary responsibility for response rests with the United States because the emergency involves a subject area which, under the Constitution or laws of the United States, the United States exercises exclusive or preeminent responsibility and authority.

b. This authority was exercised for the first time following the bombing of the Murrah Federal Building in Oklahoma City, OK, on April 19, 1995. One week later, the President declared a major disaster under the provisions of 42 U.S.C. § 5170.

5. **Immediate Response Authority**. DoD Directive 3025.1.

a. Note this is not authority provided in the Stafford Act.

b. Authorizes local military commanders to save lives, prevent human suffering, and mitigate great property damage in imminently serious conditions when time does not permit approval from higher headquarters.

c. Contemporaneous notification to higher authority is required. In the Army, notification should be made to the Director of Military Support (DOMS), located in the Pentagon (703-697-4331).

d. Authorizes following types of support: rescue, evacuation, and emergency treatment of casualties; emergency restoration of power; debris removal and EOD; and food distribution.

e. This is limited authority. According to DoD 3025.1-M, Immediate Response Authority is “time sensitive.” Requests for assistance should come within 24 hours of a damage assessment.

f. Regarding reimbursement, the DoD Directive states that, although this assistance should be provided to civil authorities on a cost-reimbursable basis, the assistance should not be delayed or denied because of the inability or unwillingness of the requester to make a reimbursement commitment.

C. Types of support authorized under the Stafford Act.

1. Personnel, equipment, supplies, facilities, and managerial, technical, and advisory services in support of relief authorized under the Act (42 U.S.C. § 5170a(1) and § 5192(a)).

2. Distribution of medicine, food, and other consumable supplies, and emergency assistance (42 U.S.C. §§ 5170a(4) and 5192(a)(7)).

3. Utilizing, lending, or donating Federal equipment, supplies, facilities, personnel, and other resources to State and local governments (42 U.S.C. §§ 5170b(a)(1) and 5192(b)).

4. Performing on public or private lands or waters any work or services essential to saving lives and protecting and preserving property, public health, and safety, including—

a. Debris removal.

b. Search and rescue, emergency medical care, emergency mass care, emergency shelter, and provision of food, water, medicine, and other essential needs, including movement of supplies or persons.

c. Clearance of roads and construction of temporary bridges necessary to the performance of emergency tasks and essential community services.

d. Provision of temporary facilities for schools and other essential community services.

e. Demolition of unsafe structures which endanger the public.

f. Warning of further risks and hazards.

g. Dissemination of public information and assistance regarding health and safety measures.

h. Provision of technical advice to State and local governments on disaster management and control.

i. Reduction of immediate threats to life, property, and public health and safety. (42 U.S.C. § 5170b(a)(3)).

D. The Federal Response.

1. Executive Order 12656 designates the Federal Emergency Management Agency (FEMA) as the lead Federal agency for all domestic disaster relief. FEMA directs and coordinates the federal response on behalf of the President.

2. FEMA has prepared the *Federal Response Plan*, which defines 12 Emergency Support Functions (ESFs) for which certain federal agencies have either a primary or supporting role.

ESF 1 - Transportation. (Department of Transportation)

ESF 2 - Communications. (Office of Science and Technology Policy)

ESF 3 - Public Works and Engineering. (DoD/Army Corps of Engineers)

ESF 4 - Firefighting. (Department of Agriculture/Forest Service)

ESF 5 - Information and Planning. (FEMA)

ESF 6 - Mass Care. (American Red Cross)

ESF 7 - Resource Support. (General Services Administration)

ESF 8 - Health and Medical Services. (U.S. Public Health Service)

ESF 9 - Urban Search and Rescue (FEMA)

ESF 10 - Hazardous Materials. (Environmental Protection Agency)

ESF 11 - Food. (Department of Agriculture)

ESF 12 - Energy. (Department of Energy)

NOTE: a supporting agency can be, and DoD often is, tasked with primary responsibility for a particular mission (or for the entire ESF) outside its primary agency responsibility. DoD has supporting agency responsibilities for all ESFs.

Most States have an additional 3 (for a total of 15) ESP's.

ESF 13 - Law Enforcement

ESF 14 - Donations/Volunteers

ESF 15 - Recovery

3. FEMA appoints a Federal Coordinating Officer (FCO), typically the senior FEMA official on-scene, to manage the federal effort. Because of the likelihood of DoD involvement, a Defense Coordinating Officer (DCO) is assigned to the FCO. The DCO, an O-6 or above, is generally the Training Support Brigade Commander for that FEMA region. The DCO will be the CFO's single point of contact for DoD support.

4. After an assessment of the situation, the FCO issues Mission Assignments to participating federal agencies, defining the task and maximum reimbursement amount. FEMA reimburses those agencies from moneys either set aside or specially appropriated for a particular disaster (42 U.S.C. § 5147). Federal agencies which exceed the reimbursement amount or execute tasks not within the Mission Assignment may not be reimbursed. FEMA, under its implementing regulations (44 CFR Part 206), is the sole authority that decides whether or not reimbursement is forthcoming. **All requests for assistance should be routed through FEMA, with a view toward the issuance of a FEMA Mission Assignment.** All mission tasking must either originate from FEMA, or be routed through FEMA for approval prior to execution. Other than under the emergency 10-day provision (42 U.S.C. § 5170b(c)), the federal property emergency provision (42 U.S.C. § 5191(b)), and the DoDD 3025.1 immediate response authority, DoD has no authority to provide disaster relief independent from FEMA. All requests for DoD assistance should be routed in either one of two manners—

a. From the State or local agency to FEMA. FEMA, through the FCO, will evaluate the request and approve, disapprove, or partially approve the request. Approved requests are tasked by the FCO to the DCO, who in turn disseminates the task down to the unit(s) providing the support.

b. From the State or local agency to a DoD unit. This request should be forwarded to the DCO, who will coordinate with the FCO to determine if it will be approved, disapproved, or partially approved. Approved requests are tasked by the FCO to the DCO, who in turn disseminates the task down to the unit(s) providing the support.

E. The DoD Response.

1. In DoDD 3025.1, SECDEF appointed the Secretary of the Army as the DoD Executive Agent for disaster relief operations. As such, he is the approval authority for all such support, unless it involves CINC-assigned forces (see the discussion of DoDD 3025.15, above).

2. The Director of Military Support (DOMS) is the Secretary of the Army's action agent. DOMS coordinates and monitors the DoD effort through the DCO.

3. USACOM (CONUS, Puerto Rico, and the Virgin Islands) and USPACOM (Alaska, Hawaii, and Pacific possessions and territories) are responsible for developing disaster response plans and for the execution of those plans. They may form a Joint Task Force for this purpose.

F. Operational Issues.

1. The Stafford Act is **not a statutory exception** to the Posse Comitatus Act (discussed above). Thus, military personnel deployed on a disaster relief mission do not have a law enforcement function. Some of the following PCA problems are often encountered:

a. Traffic Control Points. Often local officials will seek military assistance in operating traffic control points to replace non-operational traffic lights. The PCA prohibits Federal troops from manning traffic control points unless there is a military purpose in doing so, e.g., opening the way for a convoy or keeping a military supply route open. If there is no military purpose involved, traffic control in the civilian community is a civilian law enforcement function. National Guard troops in Title 32 status may be used to perform this function.

b. Patrolling. Whenever a military commander is assigned an area of responsibility, one of the first priorities of work will be to ensure that the area is secure. Looting and other illegal activities may be occurring within a commander's sector. Patrolling in civilian neighborhoods for the purpose of providing security, whether on foot or in military vehicles, violates the PCA. It is important to distinguish patrols designed to execute a humanitarian relief mission (e.g., delivering MREs, medical assistance, and other essentials) from patrols designed to ensure security of the sector. The former are proper, the latter violate the PCA. Even though the mere presence of a humanitarian relief patrol may deter potential lawbreakers, there is no violation of the PCA so long as troops do not become involved in a law enforcement function.

c. Security at Supply Depots. Using Federal troops to guard any military facility, to include a supply depot under the control of the military, does not violate the PCA. As long as the facility is operated by the military, the fact that some or all of the materials and supplies stored there are State and local property (by virtue of their donation from other agencies) is irrelevant.

d. Security at Life Support Centers (LSCs). Although the American Red Cross has responsibility under ESF 6 for providing temporary shelter, often the military is called upon to provide tentage and personnel support for these LSCs. LSCs are under the control of, and operated by, State and local governments and not by the military, irrespective of the degree of military material and personnel on site. As such, the security of LSCs is exclusively a local law enforcement function. This function should be performed by local law enforcement officials, locally deputized Federal Marshals, or National Guardsmen in Title 32 status.

2. Rules for the Use of Force.

a. Unlike the GARDEN PLOT Rules of Engagement, there are no preexisting stand-alone ROE/Rules for the Use of Force for domestic disaster relief operations. The CJCS Standing Rules of Engagement (SROE) do not apply to disaster relief operations; rather, U.S. forces will follow the use-of-force guidelines issued in the disaster relief

mission's execute order and subsequent orders. As a baseline, however, the soldier's inherent right of self-defense, as stated in the SROE, would apply.

b. It should be noted that, given the nature of the operation, no additional ROE/Rules for the Use of Force are generally necessary. Indeed, in most instances troops are entering a non-hostile environment and are welcomed by the local populace with open arms.

c. In the absence of any mission specific rules for the use of force, security and guard force personnel will operate under their normal rules for the use of force as stated in DoD Directive 5210.56 and their Service regulations.

3. Force Protection.

a. During disaster relief operations in metropolitan areas, the force may be subjected to the threat of violence by local street gangs and other criminal elements. In these instances, commanders will wish to effect liaison with local law enforcement agencies (LEA) in order to properly assess the threat to the force.

b. Although liaison with LEA is often necessary, great care should be taken when that liaison results in the collection, retention, or dissemination of information on U.S. persons. See the chapter on Intelligence Law, this Handbook, for additional information.

4. Election Support.

a. Federal law (18 U.S.C. § 592) prohibits the positioning of troops "at any place where a general or special election is held." Disaster relief operations may be ongoing during the time of a scheduled election. Elections are considered essential community services under the Stafford Act, and are eligible for Federal support, subject to the restrictions of 18 U.S.C. § 592.

b. The Department of Justice has opined that, where State and local officials set up polling sites in the immediate proximity of troop concentrations (e.g., billeting areas, food distribution centers, and life support centers), there is no violation of Federal law so long as, to the maximum extent practicable, troops avoid any demonstration of Federal military authority at or near the polling site. Furthermore, DoJ has opined that troops can erect tents with light sets and provide generator maintenance for these sites without violating Federal law.

5. Chaplain Activities. Chaplains routinely deploy with their units (usually at the battalion-level or larger). Their role in disaster relief operations is not expanded by the Stafford Act. Chaplains must refrain from ministering to civilian disaster victims, which violates the Establishment Clause's prohibition on government sponsorship of religion. Many chaplains also have secular counseling expertise which they may want to put to use. While this practice would not violate the Establishment Clause, it may not be prudent because it creates the appearance of a violation as well as placing chaplains in the untenable position of having to bifurcate their secular and religious functions.

6. Claims.

a. The Stafford Act (42 U.S.C. § 5148) states that "the Federal Government shall not be liable for any claim based upon the exercise of or failure to exercise or perform a discretionary function or duty on the part of a Federal agency or an employee of the Federal Government in carrying out the provisions of this chapter." US Army Claims Service has interpreted this language as having no impact on how claims and potential claims are processed.

b. The Stafford Act (42 U.S.C. § 5173) conditions Federal debris removal assistance on the affected State and local governments agreeing to "indemnify the Federal Government against any claim arising from such removal." USARCS and FEMA share the opinion that it is FEMA, rather than the Army, that will seek indemnification from a State or local government. Accordingly, from investigation through adjudication, the normal Army claims procedures are followed. After adjudication, however, claims resulting from debris removal by Army units should be forwarded to USARCS, who will turn them over to FEMA.

7. Debris Removal.

a. Federal agencies are authorized to remove debris from both public and private lands (42 U.S.C. § 5173). Such assistance is conditioned on the affected State or local government obtaining unconditional authorization for the debris removal, and, in the case of private lands, the Federal Government must also be indemnified against any claim arising from such removal.

b. As a policy matter, commanders may wish to restrict troops from removing debris from private property in the absence of the property owner's request and presence. This will avoid adverse publicity which can arise from angry property owners whose lots were cleared against their will. As an alternative, property owners can be instructed to remove debris to the public right of way for removal, and troops can assist property owners who are present and request assistance in hauling debris to the right of way.

8. Donated Property.

a. It is very common for military units (predominantly Army Materiel Command) to be tasked to establish depots to warehouse and distribute construction materials, clothing, furniture, and other property that has been donated for distribution to disaster victims. All donated property is considered to be donated to the State, and distribution of property is done at the direction of the State agency designated as the coordinating agent for this purpose (usually the State chapter of the American Red Cross).

b. At the close of operations, when military units are returning to home station, FEMA must be contacted to coordinate a transition plan with the State. Often, private relief organizations will appear at depots requesting transfer to them of property contained within the depot. Donated property in military custody that has not been distributed to disaster victims or other relief agencies must be disposed of according to the instructions of the State entity having dominion over it.

9. Environmental Compliance. The Stafford Act (42 U.S.C. § 5159) exempts actions taken by Federal agencies while providing disaster relief from being considered a "major Federal action significantly affecting the quality of the human environment within the meaning of the National Environmental Policy Act of 1969." While Environmental Impact Statements are specifically waived, however, due consideration must be given to the effects of disaster relief operations and compliance with other federal environmental laws (such as the Clean Air Act and Clean Water Act), which are not waived. This is especially important in the area of debris removal. Often debris is removed to open burn sites, which requires a State waiver under the Clean Air Act.

10. Medical Support to Relief Workers.

a. The Stafford Act (42 U.S.C. § 5170b(a)(3)(B)) clearly envisions the provision of medical care to disaster victims. On its face, the statute appears to apply only to disaster victims, and not to the numerous relief workers in the area who may also require medical treatment. Army Regulations (AR 40-3, Medical Services) do not provide an independent source of authority.

b. The Office of the General Counsel, FEMA, has opined that the Stafford Act does authorize the provision of medical care to all persons within the disaster area, to include relief workers. Under this authority, the Public Health Service, which has primary responsibility for relief worker health under the Federal Response Plan, may request that FEMA task DoD to provide these medical services.

11. Operating a Disaster Relief Radio Station. There is no authority under the Stafford Act to operate a radio station to broadcast public service messages related to DoD disaster relief efforts. However, the Federal Communications System has, in the past, granted a limited license to operate a radio station for these purposes. The FCC should be contacted through FEMA and the National Communications System (responsible for ESF 2). The radio station can be operated by PSYOP personnel, with the caveat that it broadcast only public service messages (no music or commercial programming) and cease operation with the termination of DoD relief efforts.

12. Volunteers.

a. There are statutory exceptions to the general prohibition against accepting voluntary services under 31 U.S.C. § 1342 that can be used to accept the assistance of volunteer workers. The statute itself authorizes the acceptance of voluntary services in “emergencies involving the safety of human life or the protection of property.” The Stafford Act (42 U.S.C. §§ 5152(a), 5170(a)(2)) authorizes the President to use the personnel of private disaster relief organizations and to coordinate their activities.

b. Despite these exceptions, military units should not attempt to organize or supervise volunteer workers. Considerations of liability and control dictate that all volunteers be channeled through private relief organizations.

THE DEPUTY SECRETARY OF DEFENSE
WASHINGTON D.C. 20301-1000

29 JUN 1996

MEMORANDUM FOR SECRETARIES OF THE MILITARY DEPARTMENTS
CHAIRMAN OF THE JOINT CHIEFS OF STAFF
UNDER SECRETARIES OF DEFENSE
COMMANDERS-IN-CHIEF OF THE UNIFIED COMBATANT COMMANDS
ASSISTANT SECRETARIES OF DEFENSE
GENERAL COUNSEL OF THE DEPARTMENT OF DEFENSE
INSPECTOR GENERAL OF THE DEPARTMENT OF DEFENSE
DIRECTOR OF ADMINISTRATION AND MANAGEMENT
CHIEF, NATIONAL GUARD BUREAU

SUBJECT: DoD Training Support to U.S. Civilian Law Enforcement Agencies

This directive-type memorandum provides the DoD policy for providing advanced military training to U.S. civilian law enforcement agencies.

It is DoD policy that no advanced military training will be provided to U.S. civilian law enforcement agency (CLEA) personnel, except as noted below. "Advanced military training," in the context of this policy, is defined as high intensity training which focuses on the tactics, techniques, and procedures (TTPs) required to apprehend, arrest, detain, search for, or seize a criminal suspect when the potential for a violent confrontation exists. "Advanced military training" includes advanced marksmanship (including sniper training), military operations in urban terrain (MOUT), advanced MOUT, close quarters battle/close quarters combat (CQB/CQC), and similar specialized training. It does not include basic military skills such as basic marksmanship, patrolling, mission planning, medical, and survival skills.

As a single general exception to this policy, the U.S. Army Military Police School is authorized to continue training CLEA personnel in the Counterdrug Special Reaction Team Course, the Counterdrug Tactical Police Operations Course, and the Counterdrug Marksman/Observer Course. Additionally, on an exceptional basis, the Commander-in-Chief, U.S. Special Operations Command (USCINCSOC) may approve such training by special operations forces. In such cases, USCINCSOC will inform the Executive Secretary to the Secretary of Defense of the training support provided. Similarly, the U.S. Army MP School will continue to report training performed in accordance with existing procedures.

Those portions of applicable DoD directives and instructions relating only to the procedures for coordination and approval of CLEA requests for DoD support are not affected by this memorandum. Those portions of such directives that address the substance of training that may be provided to CLEAs will be revised to reflect this change in policy within 90 days.

The Under Secretary of Defense for Policy will notify civilian law enforcement agencies through appropriate means of this change in policy

/s/ JOHN P. WHITE

National Defense Authorization Act, Fiscal Year 1991, Public Law 101-510, as amended, Section 1004, Additional Support for Counter-Drug Activities

(a) Support to Other Agencies. During fiscal years 1991 through 2002,¹ the Secretary of Defense may provide support for the counter-drug activities of any other department or agency of the Federal Government or of any State, local, or foreign law enforcement agency for any of the purposes set forth in subsection (b) if such support is requested—

(1) by the official who has responsibility for the counter-drug activities of the department or agency of the Federal Government, in the case of support for other departments or agencies of the Federal Government;

(2) by the appropriate official of a State or local government, in the case of support for State or local law enforcement agencies; or

(3) by an appropriate official of a department or agency of the Federal Government that has counter-drug responsibilities, in the case of support for foreign law enforcement agencies.

(b) Types of Support. The purposes for which the Secretary may provide support under subsection (a) are the following:

(1) The maintenance and repair of equipment that has been made available to any department or agency of the Federal Government or to any State or local government by the Department of Defense for the purpose of—

(A) preserving the potential future utility of such equipment for the Department of Defense; and

(B) upgrading such equipment to ensure compatibility of that equipment with other equipment used by the Department of Defense.

(2) The maintenance, repair, or upgrading of equipment (including computer software), other than equipment referred to in subparagraph (A) for the purpose of—

(A) ensuring that the equipment being maintained or repaired is compatible with equipment used by the Department of Defense; and

(B) upgrading such equipment to ensure compatibility of that equipment with equipment used by the Department of defense.

(3) The transportation of personnel of the United States and foreign countries (including per diem expenses associated with such transportation), and the transportation of supplies and equipment, for the purpose of facilitating counter-drug activities within or outside the United States.

(4) The establishment (an unspecified minor military construction project²) and operation of bases of operations and training facilities for the purpose of facilitating counter-drug activities of the Department of Defense or any Federal, State, or local law enforcement agency³ within or outside the United States or counter-drug activities of a foreign law enforcement agency outside the United States.⁴

(5) Counter-drug related training of law enforcement personnel of the Federal Government, of State and local governments, and of foreign countries, including associated support expenses for trainees and the provision of materials necessary to carry out such training.

(6) ⁵ The detection, monitoring, and communication of the movement of—

(A) air and sea traffic within 25 miles of and outside the geographic boundaries of the United States; and

(B) surface traffic outside the geographic boundary of the United States and within the United States not to exceed 25 miles of the boundary if the initial detection occurred outside of the boundary.

(7) Construction of roads and fences and installation of lighting to block drug smuggling corridors across international boundaries of the United States.

¹ Section 1088(a)(1) of Public Law 102-190 struck out “During fiscal year 1991” and inserted in lieu thereof “During fiscal years 1991, 1992, and 1993.”.

Section 1041(a) of Public Law 102-484 struck out “and 1993” and inserted in lieu thereof “1993, and 1994.”.

Section 1121(a) of Public Law 103-160 struck out “fiscal years 1991, 1992, 193, and 1994” and inserted in lieu thereof “fiscal years 1991 through 1995”

Section 1011(a) of Public Law 103-337 struck out “through 1995” and inserted in lieu thereof “through 1999.”

Section 1021(a) of Public Law 105-261 struck out “through 1999” and inserted in lieu thereof “through 2002.”

² Section 1021(b)(1) of Public Law 105-261 struck through “unspecified minor construction” and inserted in lieu thereof “an unspecified minor military construction project.”

³ Section 1021(b)(2) of Public Law 105-261 inserted “of the Department of Defense or any Federal, State, or local law enforcement agency.”

⁴ Section 1021(b)(3) of Public Law 105-261 inserted “or counter-drug activities of a foreign law enforcement agency outside the United States.”

⁵ Section 1041(b)(1) of Public law 102-484 struck out “(6) Aerial and ground reconnaissance outside, at, or near the borders of the United States.”; and inserted a new par. (6).

(8) Establishment of command, control, communication, and computer networks for improved integration of law enforcement, active military, and National Guard activities.

(9) ⁶ The provision of linguist and intelligence analyst services.

(10) ⁷ Aerial and ground reconnaissance.

(c) ⁸ Limitation on Counter-Drug Requirements. The Secretary of Defense may not limit the requirements for which support may be provided under subsection (a) only to critical, emergent, or unanticipated requirements.

(d) Contract Authority. In carrying out subsection (a), the Secretary of Defense may acquire services or equipment by contract for support provided under that subsection if the Department of Defense would normally acquire such services or equipment by contract for the purpose of conducting a similar activity for the Department of Defense.

(e) Limited Waiver of Prohibition. Notwithstanding section 376 of Title 10, United States Code, the Secretary of Defense may provide support pursuant to subsection (a) in any case in which the Secretary determines that the provision of such support would adversely affect the military preparedness of the United States in the short term if the Secretary determines that the importance of providing such support outweighs such short-term adverse effect.

(f) Conduct of Training or Operation to Aid Civilian Agencies. In providing support pursuant to subsection (a), the Secretary of Defense may plan and execute otherwise valid military training or operations (including training exercises undertaken pursuant to section 1206(a) of the National Defense Authorization Act for Fiscal Years 1990 and 1991 (Public Law 101-189; 103 Stat. 1564)) for the purpose of aiding civilian law enforcement agencies.

(g) Relationship to Other Laws.--(1) The authority provided in this section for the support of counter-drug activities by the Department of Defense is in addition to, and except as provided in subsection (2), not subject to the requirement of chapter 18 of title 10, United States Code.

(2) Support under this section shall be subject to the provision of section 375 and, except as provided in subsection (e), section 376 of title 10, United States Code.

(h) ⁹ Congressional Notification of Facilities Projects.—(1) When a decision is made to carry out a military construction project described in paragraph (2), the Secretary of Defense shall submit to the congressional defense committees written notice of the decision, including the justification for the project and the estimated cost of the project. The project may be commenced only after the end of the 21-day period beginning on the date on which the written notice is received by Congress.

(2) Paragraph (1) applies to an unspecified minor military construction project that —

(A) is intended for the modification or repair of a Department of Defense facility for the purpose set forth in subsection (b)(4); and

(B) has an estimated cost of more than \$500,000.

⁶ Section 1041(b)(2) of Public Law 102-484 added a new par. (9).

⁷ Section 1121(b) of Public Law 103-160 added a new par. (10).

⁸ Section 1041(c) of Public Law 102-484 redesignated subsecs. (c) through (g) as (d) through (h), and inserted a new subsec. (c).

⁹ Section 1021(c) of Public Law 105-261 inserted a new par. (h).

THE SECRETARY OF DEFENSE
1000 DEFENSE PENTAGON
WASHINGTON, DC 20301-1000

October 6, 1998

MEMORANDUM FOR SECRETARIES OF THE MILITARY DEPARTMENTS

CHAIRMAN OF THE JOINT CHIEFS OF STAFF
UNDER SECRETARY OF DEFENSE FOR POLICY
GENERAL COUNSEL OF THE DEPARTMENT OF DEFENSE
COMMANDERS OF THE COMBATANT COMMANDS
DIRECTOR OF ADMINISTRATION AND MANAGEMENT
DIRECTOR, DEFENSE INTELLIGENCE AGENCY
DIRECTOR, NATIONAL SECURITY AGENCY

SUBJECT: Military Support to Counternarcotics Activities

This memorandum supersedes the Secretary of Defense (SecDef) policy memorandum dated September 18, 1989, subject: "Military Support to International Counternarcotics Activities." The Department of Defense (DoD) executes its statutory civilian law enforcement counterdrug support responsibilities pursuant to the National Security Strategy, the National Military Strategy, and the National Drug Control Strategy. As a consequence of the evolving tactics of drug traffickers, DoD is responding to requests by drug law enforcement agencies for increased training in riverine, coastal maritime, and small unit tactics; for extension of our training, enhanced intelligence collection, analysis and dissemination support; and for expansion of our helicopter and maritime transportation support. Due to this changing operational environment, the application of new technologies and increased levels of DoD support, it is necessary to update and clarify DoD policy regarding military support to counternarcotics activities both domestically and internationally. Accordingly, the following policies apply to all Military departments, Commander-in-Chief (CINC) assigned forces, and DoD agencies.

- DoD personnel shall not deploy or otherwise travel into a foreign country in connection with a non-DoD agency request for counterdrug support or a counterdrug operation, unless the Secretary of Defense or Deputy Secretary of Defense has approved the deployment or travel, or has specifically delegated that approval authority to the respective theater CINC, a Service, or the DoD Coordinator for Drug Enforcement Policy and Support.

- DoD personnel shall not directly participate in law enforcement activities such as a search, seizure, arrest, or similar activity. Consistent with this proscription, DoD counterdrug support to drug law enforcement agencies will be distinguishable and separate from law enforcement activities undertaken by the drug law enforcement agents.
- DoD personnel are prohibited from accompanying U.S. drug law enforcement agents or host nation law enforcement forces and military forces with counterdrug authority on actual counterdrug field operations or participating in any activity in which counterdrug-related hostilities are imminent. DoD personnel will make every effort to minimize the possibility of confrontation (armed or otherwise) with civilians.
- DoD personnel will not accompany U.S. drug law enforcement agents, host nation law enforcement forces or host nation military forces with counterdrug authority to/or provide counterdrug support from, a location outside a secure base or area. If included as part of an approved SecDef deployment order, DoD personnel may proceed to a forward operating base or area in accordance with the deployment order when directed by the commander or other official designated by the responsible CINC.
- Counterdrug training or support provided by DoD personnel must be requested by a U.S. law enforcement agency. If overseas, counterdrug support must be requested by an appropriate official of a department or agency of the Federal Government that has counterdrug responsibilities in that foreign country. The request must be made to the appropriate representative of said department or agency on behalf of the host nation and be approved by the U.S. Chief of Mission.
- All counterdrug training or support provided by DoD personnel must be authorized by statute. It may only be provided to Federal, state and local law enforcement agencies, or host nation police, security forces, and military forces that have counterdrug responsibilities.
- The authority delegated in Chairman of the Joint Chiefs of Staff Instruction (CJCSI) 3710.01, dated May 28, 1993, to approve counterdrug ground reconnaissance training missions in support of law enforcement agencies by the U.S. Armed Forces in federal status in the 54 States/Territories of the United States, is withdrawn. This withdrawal does not affect DoD funded National Guard counterdrug ground reconnaissance support missions, approved in the Governor's State Plans, pursuant to 32 U.S.C. § 112.

The approval procedures for military support to counternarcotics are as follows:

1. The Military Departments and the CINCs of the Unified Commands will process all requests received directly from non-DoD agencies for operational support to counternarcotics activities in accordance with CJCSI 3710.01. Requests for equipment loans and transfers should be handled in accordance with applicable domestic laws and DoD policies and directives.
2. The Chairman of the Joint Chiefs of Staff shall forward all requests for support, with his recommendation, to the Secretary or Deputy Secretary of Defense through the Under Secretary of Defense for Policy and the DoD Coordinator for Drug Enforcement Policy and Support. The DoD Coordinator for Drug Enforcement Policy and Support will forward the request for support to the General Counsel for review. When the support will occur outside the United States and its

territories, the DoD Coordinator for Drug Enforcement Policy and Support shall be responsible for coordinating the request with the Department of State before its submission to the Secretary or Deputy Secretary of Defense for approval. DoD personnel shall not deploy or otherwise travel into a foreign country in connection with such a request unless the Secretary or Deputy Secretary of Defense has approved the movement, or has specifically delegated that approval authority to the respective theater CINC, a Service, or DoD Coordinator for Drug Enforcement Policy and Support.

3. Messages to the Chairman of the Joint Chiefs of Staff (Attention: J-3, Joint Staff) concerning requests described in paragraph (1) should include the following:
 - a) The identity (name or specific position title) of the official who requested the support.
 - b) Mission of the DoD personnel involved and the source of the DoD supporting personnel (in theater assigned or other than theater assigned).
 - c) Numbers of personnel involved.
 - d) Proposed dates of the operation. Additionally, for international missions, the arrival in and departure from the host nation.
 - d) Status of approval by host country (name and specific position of host nation official granting approval), U.S. Ambassador, and appropriate CINC.
 - f) Explanation of counterdrug nexus of the DoD support provided.
 - g) Source of funding.
 - h) Citation of statutory and other legal authority for providing the support.
 - i) Command relationships.
 - j) Brief review of the risk involved to U.S. personnel.
 - k) Whether or not personnel will be armed and nature of the armament.
 - l) Applicable rules of engagement as well as limitations on participation.
 - m) Legal status of U-S. personnel deployed in a foreign nation.

I do not want to deter initiatives to improve and enhance the Department's support. However, I want to minimize and consciously address any new risks. All addressees are to ensure that requests for Department support, that go beyond the basis tenets in this policy, are forwarded through the Chairman of the Joint Chiefs of Staff to the Office of the Secretary of Defense for review and the Secretary of Defense for approval.

/s/Bill Cohen